IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2209 OF 2004

Dena Bank .. Petitioner

v/s.

1. The Union of India & ors. .. Respondents

Mr.Sunil Shukla i/by M/s. Shukla & Shukla for petitioner.

Rajiv Chavan for respondent Nos.2 and 3.

Ms. S.Gore for respondent No.1.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 17th August, 2004

P.C.

Heard.

2. Rule.

3. Ms.S. Gore, advocate waives service for respondent No.1. Mr.Rajiv Chavan, advocate waives service for respondent Nos.2 and 3.

4. Rule is taken up on board for final hearing.

5. Dena Bank- a public sector bank is the petitioner before us. It seeks to impugn the communications/Notices dated 22nd March, 2004 and

2nd June, 2004 addressed to the Manager and the Assistant General Manager of the petitioner-bank respectively.

6. By the communication/Notice dated 22nd March, 2004, the respondent No.3 called upon the petitioner to pay an amount of Rs.15,73,000/- towards the sales-tax liability for an auction sale of ZKL Bearings at Rs.55,00,000/-. By other communication/Notice dated 2nd June, 2004, the threat of prosecsution has been given by the respondent No.3.

7. The learned counsel for the respondents admitted before us that no assessment order concerning the sale of ZKL Bearings has been passed by the assessing officer under the Bombay Sales Tax Act, 1959. Upon our repeated query to the learned counsel for the respondents to show us the provision under which the petitioner has been called upon to pay the amount of Rs.15,73,000/- towards the sales tax liability without there being order of assessment, he could not show us any provision. If the sale of ZKL Bearings is subject to sales tax, obviously, by following the legal procedure as contemplated under the Bombay Sales Tax Act, 1959, the assessment order has to be passed but it is not open to the respondent No.3 to demand the amount of Rs.15,73,000/- towards the

sales tax dues from the petitioner when no determination of such sales tax liability in accordance with the Act of 1959 has been made. The communication/Notice dated 22nd March, 2004 smacks of arbitrariness on the part of the respondent No.3 and cannot be countenanced.

8. Not only that the demand of Rs.15,73,000/- by the resopndent No.3 towards sales-tax dues from the petitioner was uncalled for without there being an order of assessment, but he went a step further and by the communication/Notice dated 2nd June, 2004 threatened the Assistant General Manager of the petitioner-bank of prosecution under clause 10A of section 63 of Bombay Sales Tax Act if the amount of Rs.15,73,000/- was not paid by the petitioner. The respondent No.3 appears to have breached all norms of rule of law. The learned counsel appearing for the respondents could not justify the issuance of the communications/Notices dated 22nd March, 2004 and 2nd June, 2004. Both the communications/Notices lack authority of law.

9. Before we close, we are of the view that the conduct of the respondent No.3 in issuing the communications/Notices dated 22nd March, 2004 and 2nd June, 2004 without any authority of law deserve to be inquired into by the Commissioner of Sales Tax, Mumbai and we order ccordingly.

10. The writ petition, thus, succeeds. The notices/communications dated 22nd March, 2004 and 2nd June, 2004 (Exhibits "C" and "D") are quashed and set aside. The Commissioner of Sales Tax, Mumbai shall enquire into the conduct of the respondent No.3 in issuing the aforesaid notices/communications without authority of law. The respondent No.3 shall personally pay the cost of Rs.2500/- to the petitioner within four weeks.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)